

**BRIEF SUMMARY OF PROPOSED FLOOD HAZARD AREA RULE PROPOSAL**  
**STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**OCTOBER 2, 2006**

**Overall Summary**

The Department of Environmental Protection (Department) is proposing to repeal the existing Flood Hazard Area Control rules, N.J.A.C. 7:13, and to adopt new rules that will better protect the public from the hazards of flooding, preserve the quality of surface waters and protect the wildlife and vegetation that exist within and depend upon such areas for sustenance and habitat.

Unless properly controlled, development within flood hazard areas can increase the intensity and frequency of flooding by reducing flood storage, increasing stormwater runoff and obstructing the movement of floodwaters. In addition, structures that are improperly built in flood hazard areas are subject to flood damage and threaten the health, safety and welfare of those who use them. Furthermore, healthy vegetation adjacent to surface waters is essential for maintaining bank stability and water quality. The indiscriminate disturbance of such vegetation can destabilize channels, leading to increased erosion and sedimentation that exacerbates the intensity and frequency of flooding. The loss of vegetation adjacent to surface waters also reduces filtration of stormwater runoff and thus degrades the quality of these waters. The proposed new rules therefore incorporate more stringent standards for development in flood hazard areas and adjacent to surface waters in order to mitigate the adverse impacts to flooding and the environment that can be caused by such development. The Department is also proposing related amendments to the Coastal Permit Program rules, N.J.A.C. 7:7, and to the Coastal Zone Management rules, N.J.A.C. 7:7E, in order to ensure better consistency with N.J.A.C. 7:13 as regards development in flood hazard areas and preservation of vegetation and habitat along surface waters.

The Flood Hazard Area Control rules implement the New Jersey Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. These rules satisfy the statutory directive to "adopt land use regulations for the flood hazard area, to control stream encroachments, to coordinate effectively the development, dissemination, and use of information on floods and flood damages that may be available, to authorize the delegation of certain administrative and enforcement functions to county governing bodies and to integrate the flood control activities of the municipal, county, State and Federal Governments" (N.J.S.A. 58:16A-50b).

This proposal substantially reorganizes the rules for clarity by reorganizing sections, consolidating similar provisions and simplifying language. The new rules also incorporate a large amount of detail and description regarding the substantive standards that must be met to undertake regulated activities for better consistency within the rules as well as to facilitate understanding and compliance among the regulated community. To better reflect that this chapter implements the statutory authority of the Flood Hazard Area Control Act, the Department is proposing to add the word "Act" to the chapter title. In addition, permits issued under these rules are commonly referred to as "stream encroachment permits," which implies the existence of both a stream and an encroachment into a stream, neither of which are necessarily aspects of an activity regulated under this chapter. In order to better reflect the overall purpose and statutory authority of the Flood Hazard Area Control Act, permits issued under the chapter are therefore referred to as flood hazard area permits in this proposal.

This proposal also includes amendments to the Ninety-Day Construction Permits rules, N.J.A.C. 7:1C. The Ninety-Day Construction Permits rules set forth fees, submission requirements and review procedures for applications under several different Department permits, including permits under existing N.J.A.C. 7:13. This proposal recodifies those provisions of the Ninety-Day Construction Permits rules that address permits issued under this chapter into the proposed new Flood Hazard Area Control Act rules, so that all application requirements for flood hazard areas permits will be contained in the same chapter.

### **New methods of determining jurisdiction (N.J.A.C. 7:13-3)**

The proposal introduces new methods for determining the extent of the flood hazard area and floodway on a site. Under the existing rules, there are three ways to determine the limits of a flood hazard area, the primary method being the use of a Department delineation, which is promulgated under existing N.J.A.C. 7:13-7. In the absence of a Department delineation, the use of certain Federal Emergency Management Agency (FEMA) maps and/or the submittal of detailed calculations to determine the extent of the flood hazard area and floodway is acceptable. However, the existing rules restrict the use of FEMA mapping so that for many sites the only acceptable delineation method requires detailed hydrologic and hydraulic calculations to be performed. The Department has determined that this can be unnecessarily expensive and time-consuming for some projects. Therefore, the Department is proposing to both simplify the use of FEMA mapping to determine flood hazard areas and to expand the number of FEMA maps that can be used. In addition, the Department is proposing to add a simple and inexpensive method to conservatively approximate the flood hazard area elevation (but not the floodway limits) for projects that do not need an exact delineation to prove that they comply with the requirements of the rules. These new options will allow applicants to choose from a wider range of methods by which to determine the flood hazard area given the availability of mapping resources, the type of activity proposed and the level of accuracy required to demonstrate compliance for a given project.

### **Riparian zone (N.J.A.C. 7:13-4.1 and 10.2)**

The proposal introduces a name for an existing regulated area adjacent to watercourses that is described at existing N.J.A.C. 7:13-1.3(a)2 and 3. The Department is proposing to call this area the "riparian zone." The riparian zone is comprised of the land and vegetation within a certain distance of all regulated waters, as well as the regulated water itself. The proposal also clarifies and reorganizes the provisions that apply to this regulated area under existing N.J.A.C. 7:13-3.2.

Research has shown that a vegetated area immediately adjacent to a watercourse provides a variety of significant functions and values. As stated by the United States Army Corps of Engineers in a rule proposal (Federal Register Volume 64 No. 139 Page 39274, July 21, 1999) that would allow the Army Corps to require vegetated buffers adjacent to certain water areas, which was later adopted (Federal Register Volume 65 No. 47 March 9, 2000), vegetated buffers along waters serve to:

1. Reduce adverse effects to water quality by removing nutrients and pollutants from surface runoff;

2. Reduce concentrations of nutrients and pollutants in subsurface water that flows into streams and other open waters;
3. Moderate storm flows to streams, which reduces downstream flooding and degradation of aquatic habitat;
4. Stabilize soil (through plant roots), which reduces erosion in the vicinity of the open water body;
5. Provide shade to the water body, which moderates water temperature changes and provides a more stable aquatic habitat for fish and other aquatic organisms;
6. Provide detritus, which is a food source for many aquatic organisms;
7. Provide large woody debris from riparian zones, which furnishes cover and habitat for aquatic organisms and may cause the formation of pools in the stream channel;
8. Provide habitat to a wide variety of aquatic and terrestrial species;
9. Trap sediments, thereby reducing degradation of the substrate that provides habitat for fish and other aquatic organisms (e.g., some fish species depend upon gravel stream beds for spawning habitats); and
10. Provide corridors for movement and dispersal of many species of wildlife. In addition, vegetated buffers next to streams provide flood storage capacity and groundwater recharge functions.

Given the many important ecological functions that a healthy riparian zone provides, adequately preserving such areas is essential to protecting New Jersey's natural resources and water supply. The Department has determined that the width of the area protected under the existing rules does not ensure that these many benefits will be provided. The proposal therefore expands the size of this regulated area. Under existing N.J.A.C. 7:13-1.3(a)2 and 3 this regulated area extends either 25 feet or 50 feet from the top of the bank of a stream channel, depending on the type of stream and the resources present. The proposal expands this regulated area to 300 feet along Category One waters and all upstream tributaries within the same HUC-14 watershed; 150 feet along all upstream tributaries to trout production waters, trout maintenance waters and tributaries within one mile upstream, waters flowing through areas that support certain threatened or endangered species and tributaries within one mile upstream, and waters that flow through areas that contain acid producing soils; and 50 feet along all other waters.

It is noted that the existing Stormwater Management rules at N.J.A.C. 7:8-5.5(h) establish a 300-foot Special Water Resource Protection Area along Category One waters and certain tributaries only when a major development, as defined at N.J.A.C. 7:8-1.2, is proposed. The 300-foot riparian zone proposed under this chapter, however, will apply to any activity that requires approval under this chapter, which includes a larger set of activities than that which is regulated under the Stormwater Management rules.

#### **Flood storage displacement (Net fill) (N.J.A.C. 7:13-10.4)**

A property that lies in a flood hazard area is periodically inundated by floodwaters. Consequently, a certain volume of floodwater will occupy that property during a flood. If a significant volume of floodwater is prevented from occupying a site, the excess floodwater will instead occupy neighboring and downstream properties, thus worsening flood conditions on

those sites. Flood storage on a site can be reduced by erecting a structure, which prevents floodwaters from entering a portion of the site, or by raising the ground through the placement of fill material. Since this can adversely impact other properties, the existing and proposed rules include various restrictions on the volume of floodwater that can be displaced by development. The existing rules allow up to 20 percent of the existing flood storage volume to be displaced on a site in most non-tidal flood hazard areas (referred to as “20-percent net fill”). Within the Central Passaic Basin, all flood storage displacement on a site must be compensated by the creation of equal flood storage elsewhere in the basin so that there is no overall depletion of flood storage in the basin (referred to as “zero-percent” net fill”). The Highlands Water Protection and Planning Act rules also contain a similar provision that prevents development in the Highlands Preservation Area from displacing flood storage.

The proposed rules further restrict flood storage losses in several ways. First, the zero-percent net fill provision in the Central Passaic Basin and Highlands Preservation Area is expanded to all non-tidal flood hazard areas Statewide. As in the Central Passaic Basin and Highlands Preservation Area, a person can still displace up to 20 percent of the flood storage on a site, provided flood storage compensation is provided offsite to meet the zero-percent requirement. However, all flood storage compensation must be made in the same flood hazard area and watershed as the proposed fill, and cannot be separated from the proposed fill by a water control structure such as a road or dam. The proposal also requires that flood storage calculations be performed for both the flood hazard area design flood and the 10-year flood, to show that both the 20-percent onsite and the zero-percent overall fill limitations are met for both of these flood events.

These changes are significant and will also affect projects in the Central Passaic Basin, since applicants in that basin will no longer be able to compensate for fill miles away from their site as is currently allowed. An exception will be made to allow the use of existing fill-credits that have already been authorized in the Central Passaic Basin, as well as any pending applications to create fill-credits that are received prior to the proposal date of these rules and that are subsequently approved. After this proposal is published, the Department will not accept new applications to create fill-credits.

### **Verifications (N.J.A.C. 7:13-6)**

The proposal introduces a process by which an applicant may request the Department to verify the limit of the flood hazard area and/or floodway on a site without first obtaining a permit. This is similar to the process for obtaining a letter of interpretation under the Department's Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A. At present, there is no process by which a person can obtain the Department's verification of a flood hazard area or floodway limit independent of the simultaneous proposal of a construction project. The proposed rules will allow a person to obtain the Department's confirmation of the limits of jurisdiction on a property under N.J.A.C. 7:13 prior to designing a project.

### **Permits-by-rule (N.J.A.C. 7:13-7)**

The proposal introduces permits-by-rule for 46 regulated activities, which replace existing provisions for non-regulated uses in the floodway at N.J.A.C. 7:13-1.3(e) and non-regulated uses in the flood fringe at N.J.A.C. 7:13-1.3(f). A permit-by-rule is an authorization to undertake a

specific regulated activity without the need to obtain prior written approval from the Department provided all conditions of the permit-by-rule are satisfied. The activities proposed to be permitted-by-rule meet the definition of a regulated activity under proposed N.J.A.C. 7:13-2.4. However, the Department has determined that each of these activities will have a *de minimis* impact on flooding and the environment if undertaken as prescribed by each proposed permit-by-rule. Eight of the proposed permits-by-rule require an applicant to notify the Department in writing or electronically 14 days prior to construction.

### **General permits (N.J.A.C. 7:13-8)**

The proposal includes general permits for sixteen activities in order to facilitate undertaking various activities that have been identified as having minimal impacts. The proposal includes general permits covering certain stream cleaning, scour protection and stormwater facility maintenance activities by public entities, various agricultural activities under NRCS oversight, relocation and reconstruction of damaged buildings, and certain activities along small streams and in tidal flood hazard areas

General permits are for specific regulated activities and involve a simplified application to the Department as well as a special certification from an engineer. No public notice is required for an activity undertaken pursuant to a general permit and an application fee of \$500.00 is required except for proposed general permit 1 (for activities under the Stream Cleaning Act, N.J.S.A. 58:16A-67) and proposed general permit 6 (to reconstruct and elevate a private residence destroyed by flood, fire or natural disaster). These minimal submission requirements are necessary to enable the Department to ensure that general permits are only utilized in appropriate circumstances.

Seven of the proposed general permits are specifically targeted for projects that are designed and overseen by the NRCS. Two of the proposed general permits are for local governments seeking either to remove sediment from channels (which implements the Stream Cleaning Act) or to provide scour protection to existing bridge abutments. One general permit allows the maintenance and repair of stormwater management structures and conveyance features by a public entity. One allows the relocation of a building in order to reduce flood damage potential and another allows the reconstruction of a private residence destroyed by fire, flood or other natural disaster. Finally, three general permits are proposed for certain activities along waters that drain less than 50 acres and one is proposed for the construction of a private residence in a tidal flood hazard area in certain circumstances.

### **Transfer (N.J.A.C. 7:13-14.1)**

The proposal introduces a process by which the owner of a site who has received an approval under N.J.A.C. 7:13 can transfer the approval at the time of the sale of the site to a new owner, provided there is no change in the project and certain conditions are satisfied. Under the existing rules, an approval is valid only for the original applicant, and a new approval must be obtained by the new owner if a site is sold.

### **Fees (N.J.A.C. 7:13-17)**

The proposal relocates fee provisions into the Flood Hazard Area Control Act rules from the Ninety-Day Construction Permits rules at N.J.A.C. 7:1C. This will consolidate all requirements that apply to flood hazard area permits into one chapter. The fees applicable to permits issued under this chapter were most recently amended effective January 3, 2006, (see 38 N.J.R. 134(a)), and only minor modifications to the fee schedule are proposed herein. The existing fees for permits are not proposed to be changed. The reference to major and minor permits is removed, since this distinction is not continued in these proposed new rules. A new fee schedule is proposed for verifications (the fees for which match the existing fees for stream encroachment lines), the general permits that require fees, the transfer of an approval to a new owner of a property, and the revision of a Department flood hazard area delineation.